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Supreme Court of the United States

OCTOBER TERM, 1956.

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

STATEMENT AS TO JURISDICTION.

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IN THE

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GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

STATEMENT AS TO JURISDICTION.

In compliance with Paragraph 2 of Rule 13 and with Rule 15 of the Rules of the Supreme Court of the United States, as amended, Appellants (plaintiffs below) submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the District Court entered in this cause.

OPINION BELOW.

The opinion of the United States District Court for the Northern District of Alabama, Southern Division, was delivered February 17, 1956, but has not been reported in the official reports. Copies of the opinion and of the judgment of the District Court entered the same day are attached hereto as Appendix A.

The earlier opinion of the District Court (reported at 116 F. Supp. 354 (N. D. Ala., 1953)) and the judgment pursuant thereto were entered November 9, 1953. Copies of the earlier opinion and judgment are attached hereto as Appendix B. Said prior judgment was affirmed by the Supreme Court of the United States per curiam on February 1, 1954, 347 U. S. 901 (1954).

The State court decisions to which the District Court's February 17, 1956 opinion (Appendix A) refers were rendered in the Circuit Court of Montgomery County, Alabama, on April 12, 1954 (a copy of the Circuit Court decision is attached hereto as Appendix C) and in the Supreme Court of Alabama on March 10, 1955 (a copy of the Alabama Supreme Court opinion is attached hereto as Appendix D). The opinion of the Alabama Supreme Court is reported in 262 Ala. 785, 78 S. 2d 646 (1955).

JURISDICTION.

Appellants sought an injunction against enforcement of a statute of the State of Alabama (Acts of Alabama (1953) page 974, hereinafter called "Solomon Act" or "Act," the text of which statute is attached hereto as Appendix E) claiming that the statute violated the Fourteenth Amendment of the Constitution of the United States. The action was brought pursuant to Sections 1331, 1343 and 2201 of Title 28, United States Code and was heard and

determined by a District Court of three judges, as provided for in Sections 2281 and 2284 of Title 28 of the United States Code. The judgment of the District Court denying relief and dismissing appellants' action with prejudice was entered February 17, 1956. Notice of appeal was filed in the United States District Court for the Northern District of Alabama, Southern Division, March 21, 1956. Time for docketing this case was enlarged by orders of said District Court entered May 18, 1956 and August 17, 1956 so as to permit docketing on or before September 16, 1956. Said orders enlarging time for docketing are on file with the Clerk of this court. The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Section 1253 of Title 28 of the United States Code.

The full text of the Solomon Act (Acts of Alabama (1953) p. 974) is set forth in Appendix E. The most pertinent provisions are as follows:

> Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission on institution thereof.
>
> Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

QUESTIONS PRESENTED.

1. Can a State, consistently with the Fourteenth Amendment, exclude a government employee, working as a clerk in a state operated liquor store, from further public employment solely because of membership or participation in a labor union?

2. Can a state, consistently with the Fourteenth Amendment, establish as a condition of continued employment by the state, resignation from membership in a labor organization because that organization has, as one of its ultimate purposes, the improvement of wages through collective bargaining when, but only when, such bargaining is permitted by the state?

3. Can a state, consistently with the Fourteenth Amendment, prohibit state employees of a retail liquor store from exercising their rights of voluntary association, mutual assembly, consultation, discussion and free speech because those rights are exercised through membership or participation in a voluntary association which also has, as one of its purposes, collective bargaining if legitimate, with one or more employers?

4. If a state can constitutionally prohibit its employees from joining any labor union, can it, consistently with the Fourteenth Amendment, limit such prohibition to employees who are neither teachers, nor employed by those agencies of the state in which the employees are already fully organized into labor unions, nor employed by cities or counties?

5. Does the Solomon Act violate the Fourteenth

Amendment on its face and as applied to plaintiffs and to the members of plaintiff Government and Civic Employees Organizing Committee, CIO (hereinafter called "plaintiff Union")?

STATEMENT OF THE CASE.

Plaintiff Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board and is a member of plaintiff Union. Under the Solomon Act he is threatened with discharge and with forfeiture of all employment rights, benefits and privileges because, and solely because, he intends to remain a member of plaintiff Union.

Plaintiff Union is a labor organization engaged in organizing and recruiting members among the civilian employees employed by governmental and civic agencies.* Plaintiff Union's purpose is to improve the conditions of employment for and the quality of service rendered by such employees. Among the members of plaintiff Union are persons, such as plaintiff Habshey, who are employed by agencies of the State of Alabama. The passage and threatened enforcement of the Solomon Act in 1953 caused many members to resign from plaintiff Union and many potential members to refrain from joining. The Union and Habshey, one of its remaining members, thereupon brought this suit to restrain enforcement of the Act.

In the original opinion of the three-judge District Court,

* In July, 1956, in consequence of the merger of the American Federation of Labor and the Congress of Industrial Organizations, plaintiff Union took action to merge with its AFL-affiliated counterpart into the American Federation of State, County and Municipal Employees, affiliated with the American Federation of Labor and Congress of Industrial Organizations. Under the merger agreement every member of plaintiff Union, including plaintiff Habshey, automatically continues as a member of the merged union and all the provisions of plaintiff Union's Rules relevant to this cause remain applicable to such members.

116 F. Supp. 354, 359 (N. D. Ala., 1953) and its judgment order of November 9, 1953, which was affirmed by this Court, 347 U. S. 901 (1954), the District Court withheld the exercise of jurisdiction but retained the cause "for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available". On February 19, 1954, plaintiff Union filed an equity action in the Circuit Court of Montgomery County, Alabama, praying for an injunction against the enforcement of the Solomon Act against plaintiff Union or its members and further praying for a declaratory judgment determining that plaintiff Union was not "a labor union or labor organization" within the Solomon Act and that the Act had no application to plaintiff Union or its members.

In the bill of complaint in the state court, set forth in the record herein at pages 2-9 of Plaintiffs' Exhibit 1, plaintiff Union alleged that one of the objects in its Rules of organization was:

> "Second. To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

When plaintiff Union had asked defendants to negotiate, defendants had denied that plaintiff Union could legitimately deal with defendants under Alabama law and had refused to engage in negotiations as to Alcoholic Beverage Control Board employees. In accordance with its governing rules, plaintiff Union had accepted such refusal and thereafter had, without negotiation, sought to assist its members in individual employment problems, and to consult with its members privately and in Union meetings as to common problems involving working conditions and as to public affairs, economic and political issues, State and Federal political candidates, rights under Federal legislation (such as the Social Security Act) and the possi-

bility of extending such rights to members and others, matters of Federal and State taxation, and eligibility for the right of franchise under State and Federal laws.

On April 12, 1954 the Circuit Court of Montgomery County, Alabama, denied plaintiff Union's prayer for injunctive relief, declaring:

> "Said statute of Alabama (Solomon Act) applies to complainant, its activities and its members all as described in the complaint."

On appeal, the Alabama Supreme Court affirmed the Circuit Court decree March 10, 1955, on the ground that the Union was a "labor union" subject to the Solomon Act, irrespective of its actions, because one of its governing objects remained the improvement of working conditions "by legislation, negotiation or other lawful means."

On February 15, 1956, the instant case was resubmitted to the three-judge District Court for final decree. On February 17, 1956, the three-judge Court entered the judgment here appealed from, ruling "that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional" and dismissing plaintiffs' action with prejudice.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

This appeal presents constitutional questions of serious import, clearly requiring plenary consideration, with briefs on the merits and oral argument, for their resolution.

At the time this case was last before the United States Supreme Court, troublesome questions were presented for determination preliminary to the constitutional issues. The three-judge Court had been of the view that the Solomon Act could be construed by the state courts to meet the challenge of unconstitutionality. Accordingly, it had refused injunctive relief but had retained jurisdiction. This Court affirmed.

Plaintiff Union then instituted an action in the state courts for injunctive and declaratory relief so that an authoritative construction of the Act, as applied to plaintiff Union, could be obtained. The Alabama Supreme Court construed the Act as applicable to any organization which has, as one of its ultimate objectives, the achievement of a collective bargaining relationship with any employer—even though the organization abides by existing law forbidding such bargaining with the state and contents itself, as did plaintiff Union, with other activities of a "legitimate" nature so long as collective bargaining with the state remained forbidden. Now the question is squarely presented as to whether a state may constitutionally prohibit its employees from joining or remaining members of an organization such as plaintiff Union.

The District Court, in its first decision, concluded that the settlement of wages and other conditions of employment for state employees was a proper subject for state legislative or executive action and not for collective bargaining; that the state could constitutionally, therefore, prohibit its employees from being members of an organization for the purpose of engaging in collective bargaining; and that the question of whether the Solomon Act was so limited should be decided by the state courts.

The state courts have now decided that the statute is not so limited. Whether or not a union presently insists on collective bargaining with the State, and whether or not it accepts the denial of such bargaining under present law and limits itself to lawful activities and efforts to change the law, the state courts have declared that it falls within the statutory ban if one of its ultimate purposes, as expressed in its governing Rules, is to achieve collective bargaining with one or more employers, even—as here—by "legitimate means".

This case confronts the Supreme Court with a new kind

of attempt by a State to impose conditions on public employment which cut across constitutional rights of the employees involved. Heretofore this Court has resolved conflicts between claimed State interests and individual rights in such cases as:

Slochower v. *Board of Higher Education*, 350 U. S. 551, 100 L. Ed. 449, 76 S. Ct. 637 (1956).

Wieman v. *Updegraff*, 344 U. S. 183, 97 L. Ed. 216, 73 S. Ct. 215 (1952).

Adler v. *Board of Education*, 342 U. S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952).

Garner v. *Board of Education*, 341 U. S. 716, 95 L. Ed. 1317, 71 S. Ct. 909 (1951).

Here, however, for the first time the condition sought to be imposed by the State is directed solely against membership in a labor union; mere membership, without more, causes the absolute forfeiture of the employment rights of the government employee if one of the union's ultimate objects is collective bargaining with any employer.

To enforce the Solomon Act, as so construed, and to uphold the patently arbitrary condition it imposes on public employment, would be to run counter to the requirements of due process as made clear in *Wieman* v. *Updegraff*, 344 U. S. 183, 191-92, 97 L. Ed. 216, 222, 73 S. Ct. 215 (1952):

> "For in United Public Workers, though we held that the Federal Government through the Hatch Act could properly bar its employees from certain types of political activity thought inimical to the interests of the Civil Service, we cast this holding into perspective by emphasizing that Congress could not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass, or take any active part in missionary work.' 330 U. S. at 100. See also *In Re Summers*, 325 U. S. 561, 571 (1945). We need not

pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

Even in dealing with the sensitive questions of loyalty, a State must of course conform to the requirements of due process. As this Court stated at its last term in *Slochower* v. *Board of Higher Education,* 350 U. S. 551, 555, 100 L. Ed. 449, 453, 76 S. Ct. 637, 639-40 (1956):

"The problem of balancing the State's interest in the loyalty of those in its service with the traditional safeguards of individual rights is a continuing one. To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful and nondiscriminatory terms laid down by the proper authorities."

Here no problem of protecting the State against disloyalty of a public servant exists. Rather, the activities which the State of Alabama is seeking to restrict are themselves constitutionally protected:

"Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm. . . . And the right either of the workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." *Thomas* v. *Collins,* 323 U. S. 516, 539, 89 L. Ed. 430, 445, 65 S. Ct. 315, 327 (1945).

By infringing those rights the State of Alabama has violated the Fourteenth Amendment.

The arbitrariness of the statutory classification established by the Solomon Act is manifest. No relationship between simple membership in a labor union and unsuit-

ableness for public employment has been, or constitutionally could be, established. No attempt has been made to restrict only activities reasonably found by the legislature to have a potential for evil:

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive." *Slochower* v. *Board of Higher Education,* 350 U. S. 551, 558, 100 L. Ed. 449, 455, 76 S. Ct. 637, 641 (1956).

Moreover, the very exclusions made by the Solomon Act further violate the Fourteenth Amendment by their arbitrary character. In *Adler* v. *Board of Education,* 342 U. S. 485, 493, 96 L. Ed. 517, 524, 72 S. Ct. 380, 385 (1952), this Court said, in upholding a state statute limited to the field of education:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this the state has a vital concern."

Yet the Alabama legislature has made the Solomon Act provisions specifically inapplicable to teachers (Section 3, Appendix E). Whatever the unarticulated and unknown "evil" of union membership may be, it apparently does not extend to the teacher who "works in a sensitive area in a schoolroom." Nor does the Act apply to employees of cities, counties or the State Docks Board (in which latter agency unions affiliated with the railroad brotherhoods had already organized the employees and negotiated wage schedules and working conditions when the Act was passed; Plaintiff's Exhibit 12). In sum, the limitations imposed on the Act by the legislature violate the equal protection clause of the Fourteenth Amendment just as the basic classification made by the Act denies both equal protection and due process.

In recent terms this Court has often been called upon to mark out the area of constitutional protection of govern-

ment employees. Here a state legislature has sought to erode that area by prohibiting state employment to every member of a labor union, and the state courts have defined "labor unions" to include any organization one of whose ultimate purposes is the achievement of collective bargaining, even though the organization proposes only to use lawful means to that end, accepts existing restrictions against such bargaining with the state, and confines its activities to other areas of employee interest and advancement where collective bargaining is forbidden.

We think it clear that a state could not, consistently with the Constitution of the United States, forbid its employees from believing in the principal of collective bargaining. We think it equally clear that a state cannot constitutionally prohibit its employees, upon pain of dismissal, from joining an organization because that organization believes in collective bargaining.

We submit that the District Court failed to recognize that such an Act, with such a judicial construction, violates the Fourteenth Amendment. We believe that the constitutional questions presented by this appeal are substantial and of public importance.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Alabama,
Southern Division.

Civil Action, No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY,
Plaintiffs,
versus
S. F. WINDSOR, HARRELL HAMMONDS, KNOX MCRAE, CLARENCE V. EVANS, and MELVIN DAWKINS,
Defendants.

Before Rives, Circuit Judge,
Lynne and Grooms, District Judges.

Per Curiam:

OPINION.

The Alabama statute involved and the nature of this litigation have been fully stated in our earlier opinion in this case reported in 116 F. Supp. 354.[1] In conformity

1. In part saying:
"The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State,

with that opinion, this Court on November 9, 1953, entered its judgment,

> "that the final relief for which plaintiffs prayed in their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; thereafter, such further proceedings will be had herein as may then appear to be lawful and proper."

On appeal on the 1st day of February, 1954, the Supreme Court of the United States entered its judgment granting a motion to affirm and ordering and adjudging "that the judgment of the District Court in this cause be, and it is hereby, affirmed with costs." See 347 U. S. 901.

Thereafter on the 19th day of February, 1954, the plaintiff association filed in the Circuit Court of Montgomery County, Alabama in Equity, its bill of complaint praying for an injunction and a declaratory judgment determining the status of said association, under said Alabama statute. The said State Circuit Court on the 12th day of April, 1954 entered its final decree in said cause, by which it declared in pertinent part that, "Said Statute of Alabama applies to complainant, its activities and its mem-

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there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State, and, as so construed, meet the challenge of unconstitutionality." *Government and Civic Employees Organ. Com.* v. *Windsor*, 116 F. Supp. 354, 357.

bers all as described in the complaint. The prayer for injunctive relief is denied."

On appeal, that final decree was affirmed by the Supreme Court of Alabama on the 10th day of March, 1955, pursuant to an opinion reported in 262 Ala. 785, 78 So. 2d 646.

The case is again submitted to this Court for final decree upon the pleadings, affidavits, and testimony taken orally upon the earlier hearing.

Admittedly, the case has now remained pending, in accordance with the earlier judgment, "for a reasonable time to permit the exhaustion of such State, administrative and judicial remedies as may be available." As indicated, we have heretofore decided that the Solomon Bill can be so construed as to meet the challenge of unconstitutionality, and our said decision has been affirmed by the Supreme Court of the United States. After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the State courts will ever so construe said statute. *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 186; *Arizona Copper Co.* v. *Hammer,* 250 U. S. 400, 430; *Pelton* v. *Commercial National Bank,* 101 U. S. 143.

Judgment is entered accordingly.

Done, this the 17th day of February, 1956.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

HOBART H. GROOMS,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Alabama,
Southern Division.

Civil Action, No. 7466.

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY,
Plaintiffs,
versus
S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, and MELVIN DAWKINS,
Defendants.

JUDGMENT.

This cause coming on to be heard on the 15th day of February, 1956, before a duly constituted district court of three judges, all parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits, and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

IT IS, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED by the court that this action be and the same is hereby dis-

missed with prejudice, and that the costs herein be taxed against the plaintiffs.

Done, this the 17th day of February, 1956.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

HOBART H. GROOMS,
United States District Judge.

APPENDIX B.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 7,466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM E. THAMES; MAURY A. McWILLIAMS; AND R. P. McREE,

Defendants.

Before RIVES, Circuit Judge; LYNNE and GROOMS, District Judges

GROOMS, *District Judge:*

OPINION.

This action is for an injunction and declaratory judgment. Jurisdiction is invoked under 28, U. S. C. A., Sections 1331, 1343, and 2201. Since the injunction sought is to restrain the enforcement, operation and execution of a statute of the State of Alabama, this Court is convened pursuant to Title 28, U. S. C. A., 2284. The statute involved is House Bill 231, known as the "Solomon Bill".[2] This statute became effective on September 18, 1953.

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[2] BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which em-

By stipulation, the case is submitted for final decree upon the pleadings, affidavits, and testimony taken orally.

This action is filed by the Government and Civic Employees Organizing Committee, CIO, an unincorporated association and E. J. Habshey, a clerk employed at Alabama Liquor Store No. 75, Birmingham. The defendants are J. T. Thrower, who is Chairman of the Alabama Alcoholic Beverage Control Board; William K. Thames and Maury A. McWilliams, members of the Board; R. F. McRee, Administrator of the Board, S. F. Windsor, District Store Supervisor of the Board in Birmingham, and Felix L. Parsons, Store Manager of Store No. 75.

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ployees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, reemployment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Habshey is a member of the plaintiff union and intends to remain a member and to continue to participate in its activities. He has not acquired any insurance or other financial benefits as a result of such membership.

Several days after the passage of the Solomon Bill, defendant Parsons gave Habshey and the other employees of Store 75 a copy of the Bill. They were also shown a letter from defendant McRee requesting that they read, "understand," and initial one copy of the Bill. This copy was to be forwarded to Montgomery and another copy retained at the store. This appears to have been a routine procedure. On October 2, 1953, the union orally and by wire requested defendant McRee to advise it what enforcement steps the Board contemplated taking to enforce the Bill. McRee replied that he was directed by the Board to inform the union "that the Solomon Bill will be enforced by the Board in the same manner as the ABC Act or other pertinent laws." The following day defendant Windsor told representatives of the union that he was required to carry out any and all orders of the Board and Administrator McRee.

Habshey has been an employee of the Board for three years. His present salary is two hundred and ten dollars per month, and he has no other available means of making a livelihood. Union dues are two dollars monthly. The union has expended in excess of three thousand dollars, exclusive of interest and costs, in solicitation efforts and as organizational expense in organizing Board employees. Before the passage of the Solomon Bill, there were approximately eight hundred members of the union employed by the various agencies of the State. Included among these were two hundred employees of the Board. At this time there are about two hundred and fifty members in all State agencies. Many members of plaintiff union employed by the Board have withdrawn from membership since the passage of the Bill. The Board has never recognized the union.

No rules or regulations have been proposed or adopted interpreting or implementing the Solomon Bill. No directives or orders have been issued to supervisors, store managers, or other employees with regard to the administration of the Bill. The Board has adopted no specific policies concerning the Bill other than a general recognition of the duties to enforce all the laws of Alabama relating to the Alabama Alcoholic Beverage Control Board. Neither Habshey nor any other employee has been threatened with discharge or dismissal or deprivation of employee rights, benefits or privileges by reason of continued membership and participation in the plaintiff union. No inquiries or investigations have been made by or on behalf of the Board concerning union membership. No action has been taken by the State Personnel Board or its Director whereby any employee of the Alcoholic Beverage Control Board has been dismissed from his employment or deprived of any of his rights, benefits and privileges accorded him by reason of his public employment or deprived of any of his rights by reason of his public employment in the Merit System of Alabama, because of membership in any labor union. Habshey has enjoyed full Merit System status, and except to the extent that the Solomon Bill has affected his status, presently enjoys all the rights, benefits, and privileges accorded under the Merit System.

The "forfeiture clause" by its terms was without force until thirty days after the effective date of the Bill. This action was instituted on October 7, 1953—eleven days before the expiration of such thirty-day period. No State administrative or judicial proceedings are pending and the Bill is administratively and judicially undefined.

Plaintiffs contend that the challenged statute is self-executing and that it tends itself to no possible construction other than that of unconstitutionality under the Due Process Clause of the Fourteenth Amendment. They insist

that they do not have to wait longer before seeking relief in a federal court, because they think that "Alabama's Legislature has used unmistakably simple, clear, and mandatory language" and that "there is neither need for interpretation of the statute or any other special circumstances requiring the federal court to stay action pending proceedings in the state courts." *Toomer* v. *Witsell*, 334 U. S. 385, 392. The defendants assert among other ground that plaintiffs have not exhausted available state administrative and judicial remedies and that consequently this court, as a matter of sound, equitable discretion, should decline to exercise jurisdiction.

The Solomon Bill concerns an important area of State Administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines "labor union or labor organization", and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State and, as so construed, meet the challenge of unconstitutionality.

It is the duty of this Court, as of all other federal courts, to avoid the unnecessary decision of constitutional questions. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450. In the McAdory case, the Supreme Court said:

> ". . . In advance of an authoritative construction of a state statute, which the state court alone can make, this court cannot know whether the state court, when

called on to apply the statute to a defined case or controversy, may not construe the statute so as to avoid the constitutional questions. For us to decide the constitutional question by anticipating such an authoritative construction of the state statute would be either to decide the question unnecessarily or rest our decision on the unstable foundation or our own construction of the state statute which the state court would not be bound to follow. *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, 105; see also *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538, 543; *Huddleston* v. *Dwyer*, 322 U. S. 252. Such is not the function of the declaratory judgment'' (pp. 470-471).

The exercise of jurisdiction under the Federal Declaratory Judgment Act is discretionary and not compulsory. *Smith* v. *Massachusetts Mutual Life Ins. Co.* (CA 5), 167 F. 2d 990; *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491. The remedy by injunction is likewise discretionary. *Peay* v. *Cox, Registrar*, (CA 5), 190 F. 2d 123.

Many recent federal cases reflect the doctrine of abstention whereby the federal courts ''exercise a wise discretion'' in withholding exercise of jurisdiction. *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496; *Chicago, et al.* v. *Fieldcrest Dairies, Inc.*, 316 U. S. 188; *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Spector Motor Service, Inc.* v. *McLaughlin, Tax. Com.*, 323 U. S. 101; *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Shipman* v. *Dupre*, 339 U. S. 321; *Alabama Public Service Com.* v. *Southern Ry. Co.*, 341 U. S. 341; *Stefanelli* v. *Minard*, 342 U. S. 117.

We will not undertake to analyze these decisions nor to quote or restate their many observations other than to consider briefly the opinion in the *Watson* case as illustrating the extent to which the Supreme Court has gone in withholding the exercise of jurisdiction. In that case, appellants sued to enjoin enforcement of the ''Right to Work''

Amendment of the Florida Constitution on the ground that it violated the First and Fourteenth Amendments and the Contract Clause of Article 1, Sec. 10, of the Federal Constitution, and was in conflict with National Labor Relations Act. A three-judge court, without determining whether there was equity in the bill or whether the case should be held until an authoritative interpretation of the Florida law by the Florida courts could first be obtained, proceeded at once to a consideration of the constitutional question. It held that the Amendment did not violate the several constitutional provisions and that there would be time to consider any conflict with the National Labor Relations Act, if and when it arose, since that Act and the Amendment did not on their face appear to be in conflict. The court then vacated its temporary restraining order and dismissed the bill. The Supreme Court stated that the threat to enforce the Florida law was real and imminent; that *quo warranto* proceedings had already been instituted against several of the corporations who were parties to the suit based on the fact that they had closed-shop agreements with the unions, and that appellee Watson had announced a policy to prosecute criminally all violators of the law, including appellant unions, their officers, agents, and individual members, unless they gave up their closed-shop agreements and refrained from renewing or entering into any such agreement. The Court held that the bill had equity, but that trial court erred in adjudicating the merits of the controversy, saying:

> ". . . The crux of the matter is the allegation that there is an imminent threat to an entire system of collective bargaining, a threat which, if carried through, will have such repercussions on the relationship between capital and labor as to cause irreparable damage. We conclude for that reason that the bill states a cause of action in equity.
>
> "As we have said, the District Court passed on the merits of the controversy. In doing so at this state of the litigation, we think it did not follow the proper

course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation." (pp. 595-596).

At the time of the decision in the Watson case, there were proceedings pending in the State court. There are no such proceedings here. However, the application of the rule of abstention is not conditioned upon the pending of a state administrative or judicial proceeding. If they were otherwise, a litigant by the mere device of selecting the federal court as his forum, could, in many cases, pre-empt the exercise of jurisdiction.

This action falls within the sweep of the *Watson* and other cases last referred to and is one in which the court should withhold the exercise of jurisdiction. However, in line with the procedure approved in several of the cited cases, the cause will not be dismissed, but will be retained and remain pending for a reasonable time to permit the exhaustion of such state administrative and judicial remedies as may be available; and thereafter such further proceedings will be had as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

RICHARD T. RIVES,
United States Circuit Judge;

SEYBOURN H. LYNNE,
United States District Judge;

H. H. GROOMS,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 7,466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY, PLAINTIFFS,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS; AND R. P. McREE, DEFENDANTS

JUDGMENT

This cause came on to be heard on the 27th day of October, 1953, before a duly constituted district court of three judges. All parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

It is, accordingly, ordered, adjudged and decreed by the court that the final relief for which plaintiffs prayed in their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; there-

after, such further proceedings will be had herein as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

H. H. GROOMS,
United States District Judge.

APPENDIX C.

CIRCUIT COURT OF MONTGOMERY COUNTY,

Alabama.

In Equity, No. 26815.

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association,
Complainant,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS, and R. P. McREE,
Respondents.

FINAL DECREE.

This cause coming on to be heard was regularly set for hearing, heard and submitted; and said submission having been considered by the Court, it is hereby declared by the Court as follows:

(1) The Court has jurisdiction of the parties and the subject matter. A justiciable controversy exists as to whether complainant, its activities and members, all as described in the bill of complaint, are subject to the provisions of the Statute of Alabama, HB 231, commonly known as the "Solomon Bill."

(2) Said Statute of Alabama applies to complainant, its activities and its members all as described in the complaint.

The prayer for injunctive relief is denied.

Each party to this action excepts, separately and severally, to each and every part of this decree which is adverse to him or it.

Costs are hereby taxed against complainant, for which execution may issue.

This the 12th day of April, 1954.

/s/ EUGENE W. CARTER,
Circuit Judge in Equity Sitting.

APPENDIX D.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA.

October Term 1954-55.

3 Div. 702

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO,

vs.

S. F. WINDSOR, *et al.*

3 Div. 702-A

S. F. WINDSOR, *et al.*

vs.

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO.

Appeals from Montgomery Circuit Court, in Equity.

LAWSON, *Justice.*

This is an appeal from a decree of the circuit court of Montgomery County, in equity, rendered in a declaratory judgment proceeding.

The complainant below was the Government & Civic Employees Organizing Committee, CIO, an unincorporated association, to which we will refer as the Committee. We will sometimes refer hereafter to the Congress of Industrial Organizations as the Organization.

The Committee is the appellant here and contends that the trial court erred in declaring that it is a labor union or labor organization as defined in Act 720, H. 231, approved September 17, 1953, Acts of Alabama 1953, p. 974 (which the reporter will set out and to which we will sometimes refer hereafter as the Solomon Bill), and in declaring that the provisions of the Solomon Bill have application to complainant and its members, including employees of the State of Alabama connected with the Alabama Alcoholic Beverage Control Board (sometimes referred to hereafter as the Board).

We are of the opinion that the bill shows a justiciable controversy between complainant and the respondents (*Curry* v. *Woodstock Slag Corporation*, 242 Ala. 379, 6 So. 2d 479) and that the trial court properly proceeded to the rendition of the final decree with the declarations of which we are in accord. The respondents were officers and agents of the Board from the time the bill was filed until submission here.

The evidence shows that the Organization is composed of affiliated national and international unions, *organizing committees*, local industrial unions and industrial union councils. According to its constitution it is unquestionably a labor organization "in which employees participate for the purpose (among other purposes) of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (§ 1 of Solomon Bill.)

It is our understanding of the record before us that when the Organization determines that it is advisable to create an international union of CIO, to be composed of employees in a given industry or field of labor, that decision is effectuated in the following manner: Its president, acting under authority of the executive board, appoints a national organizing committee, charged with the

duty and responsibility of organizing the employees into local unions which will later be formed into the international union.

The Committee of instant concern was established as an affiliate of the Organization on March 1, 1950, by the late Philip Murray, the then president of the Organization, acting under authority of an executive board resolution. The National Organizing Committee, selected by President Murray, consisted of a chairman, assistant chairman, secretary-treasurer, and eleven other members.

In establishing that Committee, President Murray wrote:

> "This Committee is authorized and directed to proceed with the organization of employees in federal, state, county, municipal and related governmental agencies. The Committee shall undertake to represent and defend the interests of these employees in the realm of collective bargaining and legislative matters in such manner as to afford them the protection and improvement to which they are entitled.
>
> "This Committee shall prepare and promulgate rules, in accord with the CIO Constitution, for governance of Local Unions which shall affiliate with it.
>
> "Such Committee shall be given the same status and representation on the CIO Executive Board as other affiliates of the CIO.
>
> "The CIO shall apply such financial assistance and other aid as it shall deem necessary in connection with the organizing of said Committee.
>
> "The Committee will be expanded as appears appropriate to provide adequate representation to affiliating groups of governmental employees.
>
> "When the Government and Civil Employees Organzing Committee—CIO shall determine that a National Convention shall be held to set up a permanent organization and such organization is formed, the CIO shall issue a charter to such organization as a new international Union."

The rules governing the administration of the Committee and "its local bodies" were adopted at Washington, D. C., on June 17, 1950. It was provided therein that as to all matters not contained in the rules so adopted, the Constitution of the Organization shall govern. In the rules, the objects of the Committee are stated to be as follows:

> "First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.
>
> "Second. To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means.
>
> "Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.
>
> "Fourth. To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.
>
> "Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand these benefits.
>
> "Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

All individuals who become members of the local unions organized by the Committee are required to take an oath to the effect that they will observe the rules of the Committee which, as shown above, include the Constitution of the Organization.

We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided. We do not understand appellant to contend to the contrary.

The record shows that the Committee organized a local union in this state. It is not identified by name or number in the record. We will sometimes refer to it as the Alabama local. Approximately 250 State employees who worked for the Board joined that local. Only one or two of them continued their membership after the passage and approval of the Solomon Bill.

Neither the Alabama local nor any of its members, past or present, are parties to this litigation, yet in reality it is that local that complainant sought to have the trial court declare not to be a labor union or labor organization within the meaning of the Solomon Bill.

It is asserted here by the Committee, the appellant, that on the testimony of its only witness, James W. Battles, the trial court should have so decreed, irrespective of the terms and provisions of the constitution of the Organization and the rules of the Committee.

Battles was never a member of the Alabama local. He identified himself at one point in his testimony as being a "national representative of the CIO attached to the Government & Civic Employees Organizing Committee." At another point in his testimony he said that he was a staff representative assigned to the Alabama local. Apparently he was that local's guiding hand.

He testified that in June, 1953, he made an effort to negotiate with the members of the Board on behalf of

certain of its employees who were then members of the Alabama local. He was unsuccessful. From that time until the passage and approval of the Solomon Bill the membership of the Alabama local remained approximately the same although, according to Battles, all efforts to bargain collectively and to negotiate with the Board were abandoned.

Thereafter, according to Battles, the Alabama local became merely a discussion group wherein the Committee sought to assist the members of the Alabama local privately and in union meetings with respect to their rights and privileges under state and federal laws and with respect to common interests involving the welfare and working conditions of the members and other citizens of the United States and with respect to public affairs, public figures, economic and political issues.

The constitution, rules and bylaws of a labor union or labor organization are the source of its authority. They constitute the contract between the labor union and its members, as well as the contract between members of the union.—*Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810. The statement of Battles to the effect that "we" abandoned the usual procedure pursued by labor organizations to accomplish their purposes is in irreconcilable conflict with the declared purposes and object of the Organization and of the Committee. The record before us fails to show any authority whatsoever whereby a local union on its own volition or upon the mere advice of a representative of the Organization may abandon the declared purposes and objects of the parent organization. Such an attempt to change the purpose of the local union appears to be subversive and prohibited by the constitution and laws of the national organization.—*Congress of Industrial Organizations* v. *City of Dallas* (Tex. Civ. App.), 198 S. W. 2d 143; *Perez* v. *Board of*

Police Com'rs of City of Los Angeles (Cal. Dist. Ct. of App.), 178 P. 2d 537.

Moreover, there are parts of Battles' testimony which do not support his statement to the effect that after the Board refused to negotiate, the Alabama local became a mere discussion group. The following transpired during the examination of Battles:

> "Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, toward having the wages raised?
>
> "A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

We are of the opinion that the decree of 3 Div. 702 should be affirmed, that is, the appeal from the final decree.

After the final decree was rendered the respondents gave notice of appeal from a previous decreee which overruled their demurrer to the bill. That attempted appeal has been submitted here in the same record as the appeal from the final decree and has been given the number 3 Div. 702-A.

The appeal of the respondents came too late and must be dismissed.—*Jones* v. *Industrial Life & Health Ins. Co.*, 222 Ala. 399, 132 So. 890; 4 C. J. S. 400-402. Appeal and Error, § 212 (d and e). We point out, however, that in our consideration of the appeal from the final decree we indicated that the grounds of demurrer here argued by respondents below were not well taken.

The decree in 3 Div. 702 is affirmed.

The appeal in 3 Div. 702-A is dismissed.

LIVINGSTON, C. J., STAKELY and MERRILL, JJ., concur.

APPENDIX E.

Copy of State Statute Involved

H. B. 231 5/15/53 RI RFD State Administration 6/19/53 R2 Calendar 8/4/53 R3 at length Yeas 58 Nays 17 by Messrs. Solomon, Wilson, Givhan, Butler, Summerlin, Malone (Houston), Engelhardt, Weathers, Faulk, Branyon.

A Bill to Be Entitled an Act

To provide that any public employee who joins or participates in a labor union or labor organization shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment.

Be It Enacted by the Legislature of Alabama:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the

State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.